

OTTO CAULEY	§	
VS.	§	CIVIL ACTION NO. 1:10cv326
JOE WALKER	§	

Plaintiff Otto Cauley, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled civil rights lawsuit against Joe Walker. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this Court.

The defendant has filed a motion asking that this matter be dismissed as factually frivolous. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the motion. The Magistrate Judge recommends the motion be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. The defendant filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

In providing guidance as to when a case may be dismissed as factually frivolous, the Supreme Court has stated:

[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible An *in forma pauperis* complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous is to disregard the age-old insight that many allegations might be "strange but true; for truth is always strange, Stranger than fiction."

Denton v. Hernandez, 504 U.S. 25, 33 (1992) (quoting Lord Byron, *Don Juan*, canto XIV, stanza 101 (T. Steffan, E. Steffan & W. Pratt eds. 1977)).

Even assuming *arguendo* that plaintiff's allegations might be considered unlikely, they do not rise to the level of the irrational or the wholly incredible. As a result, this matter cannot be dismissed as factually frivolous.¹

ORDER

Accordingly, the defendant's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. The defendant's motion to dismiss is **DENIED**.

So **ORDERED** and **SIGNED** this **23** day of **September, 2014**.



Ron Clark, United States District Judge

¹ The defendant has identified four cases where he asserts similar allegations were dismissed as factually frivolous. However, in each of these cases the relevant claims were dismissed at the summary judgment stage of the proceedings, for failure to state a claim or as legally frivolous or malicious, rather than as factually frivolous.